

APPEAL NO. 041530
FILED AUGUST 16, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 9, 2004, with the record closing on June 14, 2004. The hearing officer resolved the disputed issues by determining that the appellant (claimant) reached maximum medical improvement (MMI) on January 22, 2004; that his impairment rating (IR) is five percent; that Dr. P, the Texas Workers' Compensation Commission (Commission)-selected designated doctor was properly appointed; and that the claimant did not have disability from November 19, 2003, through January 22, 2004. The claimant appeals these determinations. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Sections 408.122(c) and 408.125(e) provide that where there is a dispute as to the date of MMI and the IR, the report of the designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. Nothing in our review of the record indicates that the hearing officer's determination that the claimant reached MMI on January 22, 2004, with a five percent IR, as certified by Dr. P, is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer did not err in determining that Dr. P was properly appointed as the designated doctor. The claimant argues that because he was receiving epidural steroid injections (ESIs) to treat his compensable injury, and because Dr. P does not perform ESIs, he was not qualified to serve as the designated doctor. That argument is consistent with the interpretation given to Section 408.0041 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5 (Rule 130.5) in Texas Workers' Compensation Commission Appeal No. 030737-s, decided May 14, 2003. However, in Texas Workers' Compensation Commission Appeal No. 040633-s, decided May 7, 2004, we retreated

from our decision in Appeal No. 030737-s, *supra*, based upon Commission Advisory 2004-03, dated April 19, 2004, where the Executive Director stated that the "phrase 'scope of practice' as it is commonly used is synonymous with a doctor's licensure." Under the advisory, because Dr. P is a medical doctor, he satisfies the requirement of having the same licensure as the doctor who was treating the claimant and he was, therefore, properly appointed as the designated doctor.

Disability is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability is a factual question for the hearing officer to resolve. The claimant bears the burden of establishing that a compensable injury was a producing cause of his disability. The hearing officer noted that the surveillance videotape in evidence belies the other evidence that demonstrated that the claimant was restricted to light duty. Under the facts of this case, we do not perceive error in the hearing officer's resolution of the disability issue.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701-3403.**

Chris Cowan
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Margaret L. Turner
Appeals Judge